

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA .
vs. . H-09-CR-336
. HOUSTON, TEXAS
. APRIL 27, 2010
. 8:05 A.M.
BRENT A. CARTER and .
MICHAEL N. SWETNAM, JR. .
.

TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE

TESTIMONY OF WARD COOK, VOL. 2 OF 2
EXCERPTED FROM TRIAL DAY 6 OF 9

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Proceedings recorded by mechanical stenography, transcript
produced by computer-aided transcription.

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Clark Cross of Cook

P R O C E E D I N G S

(Jury present)

THE COURT: Good morning. Please be seated.

Welcome back, ladies and gentlemen. Thank you
for your punctuality.

We're hopeful we may finish the prosecution's
case today. We'll keep marching.

You may proceed.

MR. CLARK: Thank you, your Honor.

Good morning.

CROSS-EXAMINATION

BY MR. CLARK:

Q. Good morning, Mr. Cook. How are you?

A. Hi.

Q. I'm Michael Clark. I represent Mr. Swetnam. I'd like to
ask you some questions about your testimony if I could, please,
sir.

If I'm understanding correctly, you had very
little interaction with Mr. Springfield, the CEO of the System.
Is that correct?

A. Did you say "very little"?

Q. "Very little."

A. That would be true.

Q. I believe in your deposition, when questioned about that,
your response was something to the effect that, "I might see

Clark Cross of Cook

08:06 1 him once a month" or "talk to him once a month"?
2 A. That sounds right.
3 Q. Okay. Now, prior to -- or before Mr. Springfield took over
4 the hospital system, had there been an insurance committee?
08:06 5 A. Yes, sir.
6 Q. And in light of your position, were you a part of that
7 committee, sir?
8 A. Yes, sir.
9 Q. And were you consulted with about the decision to,
08:07 10 effectively, do away with the insurance committee or not?
11 A. No, sir.
12 Q. And among the documents that have been put into evidence
13 for this jury are copies of some of the board of directors'
14 minutes and minutes of the finance committee for Valley Baptist
08:07 15 Health System. And I guess my question to you is I don't see
16 your name showing up very often, if at all, as participating in
17 the board or the finance committee discussions. Is that the
18 case, sir?
19 A. Yes, sir.
08:07 20 Q. So, just again to make sure that it's clear, am I correct
21 in understanding that you really never had an opportunity to
22 interface with the finance committee formally, or with the
23 board of directors. Is that correct?
24 A. That's true.
08:07 25 Q. So, your function and your title was -- you were senior

Clark Cross of Cook

08:08

1 vice-president at some point, were you not?

2 A. Just a VP.

3 Q. Just a VP. VP in charge of insurance or just a VP in
4 general?

08:08

5 A. It was called "resource administration." It combined the
6 insurance program and all claims against the institution. I
7 handled all those claims.

8 Q. Now, the jury heard yesterday that before getting hired by
9 the Valley Baptist Health System that you had been involved in
10 the insurance industry, you had been an agent or broker. Is
11 that correct?

08:08

12 A. For one year, back in 1968.

13 Q. And in addition to that, I'm sure that you would
14 periodically take advantage of continuing education specific to
15 insurance issues. Is that correct?

08:08

16 A. Claims.

17 Q. "Claims"?

18 A. Uh-huh.

19 Q. If I understood your deposition testimony correctly, the
20 subsidiary of the American Hospital Association would
21 periodically have some courses that would be offered that you
22 would from time to time attend, correct?

08:09

23 A. Yes, sir.

24 Q. Which would be important to do because you want to stay
25 abreast of the issues in this field. Is that correct?

08:09

Clark Cross of Cook

08:09

1 A. That's correct.

2 Q. And it's fair to say that this was a reasonably or fairly
3 sophisticated insurance program that was in place for the
4 Valley Baptist Health System. Is that correct?

08:09

5 A. I would say it was a pretty complex --

6 Q. And the Smith-Reagan Agency, as you've already testified,
7 had had a very long-standing relationship with the System that,
8 if I understood you correctly, actually preceded your arrival?

9 A. Yes, sir.

08:09

10 Q. And from time to time, I'm assuming, you would interface
11 with not only Brent Carter or my client, Mr. Swetnam, but you
12 would also interface with David Smith or his partner Joel
13 Reagan. Is that correct, sir?

14 A. Yes.

08:10

15 Q. All right. How did you feel, I guess, about not being
16 consulted with by the powers that be at the hospital about
17 insurance coverage decisions? Did it give you a sense of
18 relief or did it give you a sense of frustration or what, sir?

19 A. At first I was a little bit frustrated about being taken
20 out of the loop, but it cut down on the stress.

08:10

21 Q. So, during the period of 2006 through 2007, which was the
22 period in controversy here before this jury, would you have had
23 more face-to-face or telephone-to-telephone discussions with my
24 client, Mr. Swetnam, with Brent Carter, David Smith or Joel
25 Reagan? How would you --

08:11

Clark Cross of Cook

08:11 1 A. Most of my contact was with Mike Swetnam.

2 Q. With Mike Swetnam?

3 A. Yes.

4 Q. And would these be calls that you or he would initiate or

08:11 5 roughly about 50-50? How would you ballpark that?

6 A. I probably bugged him more than he called me.

7 Q. What types of questions would you be asking him about, sir?

8 A. Technical questions, insurance contractual questions,

9 endorsement matters, changes in coverage, just routine

08:11 10 insurance --

11 Q. Okay. Now, didn't there come a time around May of 2007

12 that you were instructed from high above, Jim Springfield or

13 perhaps his subordinate Mr. Eastham, not to directly contact

14 Mr. Swetnam but, instead, to go through Mr. Smith or

08:12 15 Mr. Reagan?

16 A. No, sir.

17 Q. Okay. Do you recall, Mr. Cook, if there were any written

18 contracts -- agency contracts, if you would, broker contracts,

19 agency contracts between the Valley Baptist Health System and

08:12 20 the Smith-Reagan Agency during that period of time?

21 A. I'm not aware of any contracts.

22 Q. Okay. And I assume that would be the same answer to the

23 question about whether there were any contracts between the

24 System and Michael Swetnam?

08:12 25 A. I'm not aware of any contracts.

Clark Cross of Cook

08:13 1 Q. That's different, however, later in the progression when
2 Alliant came in, right? Alliant, there was actually a written
3 formalized broker contract with Alliant or some sort of
4 contract?

08:13 5 A. I've never been aware of any contract.

6 MR. CLARK: Judge, if I might approach the witness for
7 just a second?

8 THE COURT: You may.

9 BY MR. CLARK:

08:13 10 Q. Do you recall giving this deposition on October the 15th of
11 2008, in the civil litigation?

12 A. I gave a deposition. I can't remember the date.

13 Q. I'll show it to you.

14 A. Okay.

08:13 15 Q. I'm just trying to orient you to the time.

16 A. Okay.

17 Q. And at that time you were asked questions by Mr. Swetnam's
18 civil lawyer Mr. Resendez. Do you recall that?

19 A. Yes, sir.

08:14 20 Q. And Mr. Hanslik, Chris Hanslik, of Boyer and Miller, I
21 guess, was acting as representative of the hospital and there
22 for you to consult with. Is that correct?

23 A. Yes, sir.

24 Q. I want to see if I can -- first of all, does that sound
08:14 25 about right, that you were deposed on or about October the 15th

Clark Cross of Cook

08:14

1 of 2008 --

2 A. Yes, sir.

3 Q. -- in that case?

4 Okay. I'm trying to refresh your memory, quite
08:14 5 frankly.

6 A. Okay.

7 Q. To my last question -- and I'll just draw you down -- and
8 read this to yourself starting on Line 20, sir, and go through
9 Line 25.

08:14

10 A. (Complies).

11 Q. Let me know when you're finished reading that.

12 A. Okay.

13 Q. Going back to my last question, about whether or not there
14 was a contract between the System and Alliant, having now
08:15 15 refreshed your memory, is your answer the same, that you
16 weren't aware of any contract but you thought there might have
17 been?18 A. Yeah, that's what I said. I didn't know. I'm not sure if
19 there's a contract. If there was, it probably would have been
08:15 20 with Alliant; but I was not aware of any.

21 Q. Okay. That's fair. I understand, sir.

22 So, with that clarification, although you weren't
23 aware of any contract, if there had been a contract, it would
24 have been with Alliant?

08:15

25 A. Yes, sir, the most recent --

Clark Cross of Cook

08:15 1 Q. But certainly not -- and you're categorical about it --
2 certainly not with Michael Swetnam or Swetnam Insurance
3 Services?

4 A. That's correct.

08:15 5 Q. In your experience, Mr. Cook, as an insurance professional,
6 basically, and somebody who has been an agent and then helping
7 to oversee the administration of a fairly complex and
8 sophisticated insurance coverage, you are aware, are you not,
9 that an insurance broker or agent does not represent the
08:16 10 client, the client is not -- there's not a fiduciary duty
11 there. You understand that, don't you?

12 A. I'm not sure what "fiduciary" is.

13 Q. Well, I understand. That's a lawyer word. I'm sorry.

14 It's a relationship that imposes duties,
08:16 15 essentially. Like a lawyer and a client, there is a duty to a
16 client.

17 Now, isn't it true that if there is any
18 relationship it's between the agent and the insurance company
19 but not between the agent and the customer?

08:16 20 A. (No response).

21 Q. If you know. If you don't know, just say you don't know.

22 A. I really don't -- it sounds okay, but I just don't know.

23 Q. You don't know. And that's a fair answer, and I
24 understand.

08:17 25 Getting back to how, physically, the various

Clark Cross of Cook

08:17 1 documents were transmitted -- and by "documents" I mean, you
2 know, the insurance policies in question, the invoices in
3 question and so on and so forth.

4 It is my understanding that you don't really
08:17 5 specifically recall which ones may have been mailed and which
6 ones may have been hand delivered. I know you've already
7 testified -- let me -- I'm sorry. That's not a fair question.

8 I know you have said in your testimony that at
9 the dinner in Mexico -- and there was only one dinner in
08:17 10 Mexico -- that actually there were some documents handed to
11 you --

12 A. Yes, sir.

13 Q. -- at that dinner.

14 But other than that, do you have any specific
08:17 15 recall whether the -- for example the Zurich documents were
16 hand delivered or not?

17 A. Well, you know, there were hundreds of documents --

18 Q. I understand.

19 A. -- back and forth every year.

08:18 20 Q. I understand.

21 A. That's been four years.

22 Q. I understand.

23 A. What I said in my deposition probably was more accurate
24 than what I can remember today.

08:18 25 Q. That's human nature. Being asked about a question that's

Clark Cross of Cook

08:18 1 closer in time, most people will remember things two years
2 after the event as opposed to four years after the event.

3 A. Yes, sir.

4 Q. And, generally, in your deposition -- if I -- again, if I
08:18 5 paraphrase it incorrectly, please correct me. But in your
6 deposition didn't you testify that you don't have a -- really a
7 specific recall of all these documents, whether they were
8 mailed or hand delivered, other than the one in Mexico we
9 talked about?

08:19 10 A. I believe that the first Zurich policy -- or invoice was
11 mailed, because I remember mailing a check to Mike.

12 Q. Okay. That would have been the 2006?

13 A. Yes, sir.

14 Q. Okay. Now, the other line of question I want to ask you
08:19 15 about has to go to your signing -- and I think you testified on
16 this issue on direct -- your signing these various policies, if
17 you would, as Mike Swetnam.

18 A. No, they weren't policies.

19 Q. Binders? What is the term?

08:19 20 A. They were just simply endorsements --

21 Q. Endorsements.

22 A. -- onto the self-insurance plan, to add physicians.

23 Q. Endorsements. Okay.

24 And how long, Mr. Cook, had this been going on --
08:20 25 let me rephrase it.

Clark Cross of Cook

08:20 1 Before this written document that you suggested
2 be created to memorialize your oral agreement with Mr. Swetnam
3 to do this, it's true, is it not, that this process had been
4 going on for several months, if not years?

08:20 5 A. Wasn't years, but maybe several weeks or months. And all
6 with his permission.

7 Q. And it would have been, at a minimum, seven or eight
8 months, at a minimum?

9 A. I can't remember.

08:20 10 MR. CLARK: May I approach, your Honor?

11 THE COURT: You may.

12 BY MR. CLARK:

13 Q. See if I can refresh your recollection. In evidence is
14 Exhibit Number 36, Mr. Cook. And I'll represent to you that
08:21 15 these may be documents that -- this is your signature, I
16 believe. And if you look at the -- at the date, is there not
17 at least five or six of them that go back to January of 2006,
18 sir?

19 A. Yes, sir. First two or three go back to January.

08:21 20 Q. Okay. Just going back to my question --

21 A. Yes, sir.

22 Q. -- it's fair to say, is it not, that at least seven months
23 before that written authorization was prepared and signed,
24 that -- that this agreement to allow you to sign as though you
08:21 25 were Mike Swetnam had been going on?

Clark Cross of Cook

08:21 1 A. Yes.

2 Q. That's fair, isn't it?

3 A. Yes.

4 Q. You didn't see anything wrong with doing that, did you?

08:22 5 A. No. Actually, I could have signed those -- I could have

6 signed my name on them. But I thought that the physicians

7 would probably be more impressed if the insurance agent signed

8 them than me.

9 Q. All right. Again, I understand. And there was no intent

08:22 10 to deceive anybody, was there?

11 A. Not on my part.

12 Q. Well, that's kind of a pregnant answer, if you don't mind.

13 Did you divine that there was some sinister reason for Michael

14 Swetnam having you sign them on his part?

08:22 15 A. Oh, absolutely not.

16 Q. Okay. Okay.

17 MR. CLARK: Can I switch over here?

18 Thank you.

19 BY MR. CLARK:

08:22 20 Q. The miracles of modern technology. They call this an

21 "Elmo." I don't think it has to do with the big bird or

22 anything like that, but it's a neat tool.

23 Mr. Cook, what I would like to draw your

24 attention to -- and, again, this is just a question. There

08:23 25 really is no notation that would indicate to another reader

Clark Cross of Cook

08:23 1 that you are signing by permission. It just shows "Michael
2 Swetnam." Sometimes you'll see people that will sign "Michael
3 Swetnam, Ward Cook by permission" --

4 A. Sure.

08:23 5 Q. -- or something like that.

6 This was the convention that you used and that
7 was used consistently, right?

8 A. Yes, sir.

9 Q. I'm going to show you a document that is Exhibit 21, and I
08:23 10 just really want to ask you if you have ever seen this document
11 or perhaps a Power Point that this appears to depict that would
12 have been prepared by Swetnam Insurance Services. And if the
13 answer is "no," I understand.

14 A. I don't remember ever seeing this before.

08:24 15 Q. Okay.

16 A. But it's been four years. So --

17 Q. And I understand, Mr. Cook. I appreciate that.

18 Now, do you recall -- and you may not; but do you
19 recall in November of 2005, mid November, November the 14th or
08:24 20 thereabouts, that there had been a meeting which apparently you
21 had attended with others from the System and also with my
22 client and a few others, regarding setting up a captive
23 insurance company?

24 A. I think I attended one or two meetings where that was the
08:25 25 subject, yes, sir.

Clark Cross of Cook

08:25

1 Q. I realize that you didn't have a whole lot of interfacing
2 with Mr. Springfield; but I guess my question would be to you
3 did you understand that Mr. Springfield was interested in
4 setting up a captive and that it was his idea, not Michael
5 Swetnam's idea, sir, to explore that route.

08:25

6 A. Well, the subject of captives came up year after year --

7 Q. Okay.

8 A. -- way back, for a long time. Mike had explored the
9 possibility of forming a captive probably 10, 15 years before;
10 and we just never did it.

08:25

11 Q. Okay. And in particular do you recall being asked by Manny
12 Vela, who was the general counsel of the System, to bring Bill
13 Boyer of that law firm up to speed on issues that might be
14 involved with the BVI captive insurance program?

08:26

15 A. I don't believe I ever did that.

16 Q. Is it possible that you would have been in such a
17 discussion but four years later that you just don't recall?

18 A. I don't remember talking to Bill Boyer about anything.

19 Q. Okay. Do you recall being in a meeting in which Manny
20 Vela, you, Randy McLelland, who was -- what was Randy's
21 position?

08:26

22 A. He was chief financial officer for awhile.

23 Q. And he was later replaced by?

24 A. (No response).

08:26

25 Q. Would it be either Scott Lieberenz or Mr. Eastham?

Clark Cross of Cook

08:27

1 A. (No response).

2 Q. If you don't know, that's fine, too, sir.

3 A. I believe Mr. Eastham replaced him first.

4 Q. But going back, do you remember being in a meeting with

08:27

5 Manny Vela, yourself, Randy McLelland, Bill Boyer, Brent Carter
6 and Michael Swetnam, where the topic of a captive insurance
7 company was discussed, where it might have been Michael Swetnam
8 bringing Mr. Boyer of Boyar & Miller up to speed on this issue
9 and what steps had been taken and how it was progressing?

08:27

10 A. I cannot remember specifically being in that meeting.

11 Q. Well, and, again, that's a fair answer; and I understand
12 that.

13 I'm going to show you what's in evidence --

14 MR. CLARK: With the Court's permission, I'm
15 approaching.

08:28

16 THE COURT: Yes, sir.

17 BY MR. CLARK:

18 Q. This is in evidence as the defendants' Trial Exhibit
19 Number 4. I'm sorry that the fonts are small. I can put it on
20 the overhead and we can enlarge it if that's difficult to read.

08:28

21 Once you've had a chance to kind of skim through
22 it and familiarize yourself with it, Mr. Cook, I would like to
23 ask you some follow-up questions.

24 A. I remember this.

08:28

25 Q. Okay. Good. Specifically, do you recall that there --

Clark Cross of Cook

08:28 1 there came a time, for whatever reason, that Michael Swetnam,
2 my client, contacted you about having essentially broken away
3 from the Smith-Reagan Insurance Agency?
4 A. This was my first knowledge of it, this memo.

08:29 5 Q. Okay. What we're looking at -- if I could, I'm going to go
6 ahead and put it up so we can all look at it together.
7 A. Okay.

8 Q. What was the context that led to -- if you recall -- and if
9 you don't, I understand -- that led to this happening?

08:29 10 And I guess -- I guess, in fairness, what I mean
11 by that is did my client reach out to you and say, "Ward, I
12 want you to know that I'm no longer associated with
13 Smith-Reagan." Or had you asked him, "What's going on" or "How
14 did that happen?"

08:29 15 A. I -- this was a total surprise to me, that he was
16 leaving --
17 Q. Okay.

18 A. -- Smith-Reagan.

19 Q. Okay. And, basically, what this exhibit reflects is that
08:30 20 he had sent you an e-mail, right?
21 A. Yes, sir, it looks like it was an e-mail.

22 Q. It looks like it was about, oh --
23 A. Yes.

24 Q. -- November the 23rd of 2007.

08:30 25 Would that comport with your memory, pretty well?

Clark Cross of Cook

08:30

1 A. I think so, yeah.

2 Q. And you responded that same afternoon -- he sent you the
3 e-mail in the morning, and you responded to Mr. Cook in the
4 afternoon. You see where I have the paper clip here?

08:30

5 A. Yes, sir.

6 Q. And basically -- we've seen this with other witnesses;
7 before. But true or not, my client represented in this
8 communication to you that mid November he had terminated his
9 employment with Smith-Reagan. And did you have any reason to
10 doubt that?

08:30

11 A. No, sir.

12 Q. He went on to say, though, that -- I guess this was trying
13 to -- trying to advise you and the hospital system about if
14 there were any questions who to talk to about coverage issues,
15 right?

08:31

16 A. Yes, sir.

17 Q. That's the way you understood it?

18 A. I believe it was.

19 Q. And did you understand that although he had broken away
20 from the Smith-Reagan Insurance Agency that the company he had
21 established, Swetnam Insurances Services, was still operational
22 but that it would be operated by David Smith until April the
23 1st, or April Fool's, of 2008?

08:31

24 Just draw your attention to this first sentence
25 here, see if that refreshes your recollection. Actually, it's

08:31

Clark Cross of Cook

08:31 1 the second sentence. "David Smith and I have agreed that David
2 would operate Swetnam Insurance Services until April the 1st of
3 2008."

4 A. Yes, sir, until April 1st, '08.

08:31 5 Q. Yeah. And, basically, that came as a real shock to you?

6 A. Yeah, it really did.

7 Q. Had you had an understanding that Mr. Swetnam was pretty
8 knowledgeable about insurance law issues?

9 A. About insurance issues, yes.

08:32 10 Q. Insurance issues. I'm sorry. That was not a well-phrased
11 question.

12 Did you -- did you consider him to be an expert
13 in this area?

14 A. Yes, sir.

08:32 15 Q. Were you aware of his reputation in this area, before this
16 lawsuit and his indictment in this lawsuit, as an expert in
17 insurance law -- or insurance services?

18 A. Yes, sir.

19 Q. And it's true, is it not, that he was widely regarded in
08:32 20 that part of the state as really a kind of go-to guy on
21 complicated insurance issues?

22 A. Yes, sir, that's true.

23 MR. CLARK: Might I have just one second, your Honor?

24 *(Discussion off the record)*

08:33 25 MR. CLARK: Judge, I'll pass the witness.

Costa Redirect of Cook

08:33

1 THE COURT: All right.

2 MR. CLARK: Thank you.

3 THE COURT: Yes, sir.

4 Mr. Costa, do you want --

08:33

5 MR. COSTA: Thank you, your Honor.

6 **REDIRECT EXAMINATION**

7 BY MR. COSTA:

08:33

8 Q. Mr. Cook, do you recall the questions Mr. Clark just asked
9 about the instances in which you signed Mr. Swetnam's name on
10 his behalf?

11 A. Yes, sir.

12 Q. And you discussed this yesterday; but before you had the
13 written authorization from Mr. Swetnam, had he -- did he know
14 you were doing that?

08:33

15 A. Yes, sir.

16 Q. How did he know?

17 A. Well, I talked to him about it. I would never have signed
18 his name to a document without his permission.

08:34

19 Q. Whose idea was it that you would just go ahead and sign
20 these instead of sending them to him to get signed?21 A. It was probably my idea, because I was tired of mailing
22 these certificates down to him to sign and get back to me.

08:34

23 Operating a self-insurance program requires that
24 the records are kept meticulously. So, when we added the
25 doctor, I needed to document that immediately.

Costa Redirect of Cook

08:34 1 And if I mailed those certificates to him,
2 sometimes it would be three or four days or a week or sometimes
3 I would have to call him and remind him to sign them and send
4 them back.

08:34 5 So, I asked him if I could sign his name on them.
6 He said, "Yeah, go ahead."

7 Q. And then you would send him a copy of what you signed?

8 A. Surely. Absolutely.

9 Q. And then, when you obtained that written authorization, he
08:35 10 insisted that you send him a copy within three business days?

11 A. Yes.

12 Q. Is that correct?

13 A. Yes.

14 Q. Because he wanted to be aware of whatever it was you were
08:35 15 signing. Is that right?

16 A. Yes. But I always sent them the same day.

17 Q. Did you receive over a million dollars for signing his
18 name?

19 A. Pardon?

08:35 20 Q. Did you -- when you were signing those documents for him,
21 did you receive any money?

22 MR. CYGANIEWICZ: Objection, your Honor. That's
23 argumentative.

24 A. No, sir.

08:35 25 THE COURT: Well, it is, slightly; but I'm going to

Costa Redirect of Cook

08:35

1 allow it.

2 BY MR. COSTA:

3 Q. Did you receive any money for doing -- for signing his
4 name?

08:35

5 A. No, sir, not a penny.

6 Q. Yesterday afternoon Mr. Chaney asked some questions about
7 this excess loss program where the hospital, I think starting
8 in the early Nineties, was providing some insurance to
9 physicians. Do you recall those questions?

08:35

10 A. Yes, sir.

11 Q. And he was asking whether the hospital knew that that may
12 have violated the law. Do you recall those questions?

13 A. Yes, sir.

14 Q. Was Mr. Swetnam involved at all in that insurance program
15 that started back in the early Nineties?

08:36

16 A. As far as I know, it was his brainchild to start it.

17 Q. I want to show you Defense 4, which was the e-mail
18 Mr. Clark just showed you. Do you recall, just looking at
19 this, this e-mail Friday, November 23rd, 2007, that Mr. Swetnam
20 wrote to you?

08:36

21 A. Yes, sir.

22 Q. Do you recall just looking at that?

23 A. Yes.

24 Q. And this is where Mr. -- let me focus for a second.

08:36

25 This is where Mr. Swetnam states that he's

Costa Redirect of Cook

08:36 1 leaving Smith-Reagan?

2 A. Yes, sir.

3 Q. And then he -- as Mr. Clark just pointed out, if you look

4 right there, "David Smith and I have agreed that David would

08:37 5 operate Swetnam Insurance Services" -- now it's focused --

6 "until April 1st, 2008"?

7 A. Yes, sir.

8 Q. Do you see that?

9 A. Yes, sir.

08:37 10 Q. So, according to this, even Swetnam Insurance Services at

11 this point, it wasn't going to be Mr. Swetnam's operation

12 anymore; is that your understanding from that e-mail?

13 A. Well, that's what he was saying.

14 Q. And that's November, 2007?

08:37 15 A. Yes, sir.

16 Q. I want to look back at Government 13. And we looked at

17 this yesterday, Mr. Cook. Do you remember looking at this

18 letter dated -- supposedly dated March 10th, 2008, on Swetnam

19 Insurance Services' letterhead?

08:37 20 A. Yes, sir.

21 Q. Do you see that's the letterhead?

22 And who is it supposedly from?

23 A. Michael Swetnam.

24 Q. And, so, this is -- March 2008 is some months after this

08:38 25 e-mail where he says that he's no longer running Swetnam

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08:38 1 Insurance Services, right?

2 A. Yes, sir.

3 Q. And this is the letter where he claims to have told
4 Mr. Springfield that RAC RE is still not licensed and then he
08:38 5 talks about reinsurance through Landmark. Is that right?

6 A. Yes, sir.

7 MR. COSTA: Pass the witness, your Honor.

8 THE COURT: Anything further?

9 MR. CYGANIEWICZ: No, your Honor.

08:38 10 MR. CLARK: May I follow up?

11 THE COURT: Okay.

12 **RECROSS-EXAMINATION**

13 BY MR. CLARK:

14 Q. Mr. Costa had asked you about the excess of loss program
08:38 15 that had been put in place, and I think you characterized it --
16 in answer to his question, as it being -- or you understood it
17 to be Mr. Swetnam's brainchild?

18 A. I'm still thinking about that. The -- the idea to figure
19 out a way to help these physicians carry insurance, the first
08:39 20 that the subject was ever brought up, I believe, was by
21 Mr. McKibbens, who was the CEO at the time.

22 Q. Preceded Springfield?

23 A. Yes, sir.

24 And I believe he asked Mike and David to try to
08:39 25 come up with a plan that would keep these doctors insured at a

Clark Recross of Cook

08:39 1 lower level and, you know, a plan to help the doctors purchase
2 insurance.

3 Q. Fair enough. And I'm assuming that at some point in time
4 the then outside counsel, a very fine firm, Fulbright &
08:39 5 Jaworski was consulted, were they not?

6 A. They did what?

7 Q. The firm of Fulbright & Jaworski?

8 A. Yes, sir.

9 Q. That had been the outside law firm that represented Valley
08:40 10 Baptist Health System during this period of time with
11 Mr. McKibbens, right?

12 A. They probably were one of several.

13 Q. Yeah. They were the primary go-to firm for health law
14 issues.

08:40 15 Tony Patterson of the Dallas office of Fulbright
16 & Jaworski, does that ring a bell?

17 A. Yes, sir.

18 Q. And you're aware, are you not, that because of the changes
19 to the Federal anti-kickback statute -- are you familiar with
08:40 20 the Federal anti-kickback statute?

21 A. Not really.

22 Q. Are you familiar with the Federal Stark Law?

23 A. Not really. I vaguely know what it is but --

24 Q. I mean, do you generally understand that the Federal and
08:40 25 the State governments have enacted civil and criminal laws that

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08:40 1 prohibit giving things of value to physicians to try to control
2 the unnecessary provision of medical services because
3 physicians are in a position to make referrals and the concern
4 is that if they are being incentivized by being given something
08:41 5 of value by the hospital system that there may be a tendency to
6 basically steer business to the hospital. You understand that
7 concept?

8 A. Yes, sir, I do understand that.

9 Q. And didn't it come to pass that there was a specific legal
08:41 10 memo that the law firm of Fulbright & Jaworski authored that
11 analyzed how this program would violate the Federal laws and
12 could subject the hospital to all sorts of bad things,
13 including perhaps criminal prosecution, perhaps violating the
14 Federal Stark law, perhaps violating the Federal anti-kickback
08:41 15 statute, perhaps implicating the Federal False Claims Act, and
16 could cost the hospital millions and millions and millions of
17 dollars?

18 A. I never saw such a report or letter or anything from
19 Fulbright about -- on that subject.

08:42 20 Q. And are you aware that Mr. Swetnam lobbied against
21 continuing this program because this would violate those laws,
22 that he thought you had to follow the advice of your outside
23 law firm? Did he ever talk to you about that?

24 A. He may have. I remember discussions -- a couple of
08:42 25 discussions with him at the time that the program was being

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08:42 1 shut down.

2 Q. Right.

3 A. But I don't remember specifically what we talked about.

4 Q. I'm going to show you -- just following up on one of the
08:42 5 other questions from Mr. Costa, I'm going to show you what is
6 marked as Defense Trial Exhibit 38, which I don't believe is
7 yet in evidence, and ask you to take a look. It's a series,
8 again, of documents that is collectively marked as Defendants'
9 Trial Exhibit 38. And I think it's similar to what you saw
08:43 10 previously.

11 Can you identify that document, please?

12 A. Yes, sir. This is a certificate of insurance in behalf of
13 Dr. Eugene Deal, dated March 19th -- no -- February 19th, '08,
14 as evidence of insurance coverage in the Harlingen Physician
08:43 15 Network self-insurance program.

16 Q. And wouldn't this also be consistent, Mr. Cook, with the
17 type of documents that we saw with that last exhibit that you
18 were signing Michael Swetnam's name by permission?

19 A. It's the same thing, yeah.

08:43 20 MR. CLARK: Judge, I'm going to move at this time to
21 introduce Defendant's Trial Exhibit 38 if I have not already.

22 I have not already. I move to introduce it.

23 MR. COSTA: No objection.

24 THE COURT: Admitted without objection.

08:44 25 BY MR. CLARK:

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08:44 1 Q. Let me show this on the overhead to everybody so we can all
2 follow along.

3 Now, what you have indicated by -- Mr. Cook, I'm
4 sorry. I'm going to go in and zoom in so we can all see part
08:44 5 of it. Either my eyes are out or this is out --

6 A. Yeah, I think this is out.

7 Q. -- the focus.

8 *(Discussion off the record)*

9 BY MR. CLARK:

08:44 10 Q. This is similar -- this is actually your signature, right?

11 A. I believe it is.

12 Q. Okay.

13 A. I can sign pretty close to Michael Swetnam's signature.

14 Q. Yeah, I can see.

08:45 15 And, Mr. Cook, up on the right-hand corner, this
16 is February the 18th of 2008, sir?

17 A. Yes, sir.

18 Q. Okay. And you'll notice that that one changed a little
19 bit. I wanted to follow up and ask you a question about the
08:45 20 second one in the series.

21 "Valley Baptist Health System, care of Ward
22 Cook"?

23 A. Yes, sir.

24 Q. Okay. This is the same type of a document, except -- let's
08:45 25 see. The date here, February the 22nd, of 2008, sir?

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08:45

1 A. Yes, sir.

2 Q. Now, down here in the right-hand corner, it changed a
3 little bit, did it not?

4 You're not actually signing it here. It looks
08:45 5 like it's a facsimile signature of David Smith.

6 A. Yes, sir, looks like.

7 Could I see the top of that again?

8 Q. Absolutely.

9 A. I'm not sure if that's the same thing or not.

08:46

10 Q. Well, absolutely. I want you to be comfortable with what
11 you're looking at; so, let me put it back in front of you. And
12 just let me know when you're ready, and I'll ask questions.

13 A. I just want to see at the top what it is.

14 Q. (Indicating).

08:46

15 A. Yeah, it's a certificate like the other one.

16 Q. Okay. And I guess my follow-up question to you is that, at
17 least by February of 2008, the convention that you were
18 following, looks like it changed -- this is February the 18th,
19 and you've identified down below that is your signature?

08:46

20 A. Uh-huh.

21 Q. But looks like four days later, the 22nd, sir, that it
22 changed to what I am calling a "facsimile signature" or a
23 stamp, or whatever it was, of "David Smith" in the bottom
24 right-hand corner.

08:47

25 You didn't have a rubber stamp to do that, did

Clark Recross of Cook

08:47

1 you?

2 A. Oh, no.

3 Q. So, apparently, at some point in time, when David Smith
4 took over operating the -- operating the Swetnam Insurance

08:47

5 Services part of the business, it changed and stamps started
6 being put on these documents.7 And I can show you others that are just like this
8 if that would help.9 Now, do you have any recall of how or why the
10 process changed, instead of you signing now David Cook is --

08:47

11 A. David "Smith."

12 Q. Or David -- I'm sorry, Mr. Cook. I didn't mean to --

13 A. It's all right. He's a nice guy.

14 Q. Well, you are, too, from what I can tell.

08:47

15 But there are other documents I believe -- maybe
16 not. Maybe those are the only documents like that that -- no.
17 Here's another one, for example, same date, same way.18 I'm just trying to drill down how do you recall
19 this happened, that it went from you signing to David Smith or
20 somebody at his office stamping it.

08:48

21 A. I don't really remember, but I think -- I think I was out
22 of town or on vacation or something and, for some reason, I
23 couldn't issue that certificate the way --24 Q. Okay. And wouldn't that be consistent also with the -- the
25 point that Mr. Swetnam was making about he was transitioning

08:48

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08:48 1 out of Swetnam Insurance Services and that this would be
2 operated by David Smith up through April the 1st of 2008, sir?

3 A. Well, yes, sir, it makes sense.

4 Q. Thank you, Mr. Cook.

08:48 5 MR. CLARK: Pass the witness.

6 MR. COSTA: Nothing, your Honor.

7 THE COURT: Okay. You may step down. You're free to
8 go. Thank you for your time. Safe travels, sir.

9 *(End of requested proceedings)*

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10
11 COURT REPORTER'S CERTIFICATION

12 I certify that the foregoing is a correct transcript from
13 the record of proceedings in the above-entitled cause.

14
15 Date: June 8, 2010

16
17 /s/ Cheryll K. Barron

18 Cheryll K. Barron, CSR, CMR, FCRR
19 Official Court Reporter
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